

VZCZCXRO1262
OO RUEH DU RUEH MR RUEH RN
DE RUEH SB #0532/01 1751632
ZNY CCCCC ZZH
O 231632Z JUN 08
FM AMEMBASSY HARARE
TO RUEHC/SECSTATE WASHDC IMMEDIATE 3065
INFO RUCNSAD/SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
RUEH AR/AMEMBASSY ACCRA 2080
RUEH DS/AMEMBASSY ADDIS ABABA 2200
RUEH RL/AMEMBASSY BERLIN 0742
RUEH BY/AMEMBASSY CANBERRA 1477
RUEH DK/AMEMBASSY DAKAR 1835
RUEH KM/AMEMBASSY KAMPALA 2256
RUEH NR/AMEMBASSY NAIROBI 4687
RUEA IIA/CIA WASHDC
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RHEFDIA/DIA WASHDC
RUEHGV/USMISSION GENEVA 1346
RHEHAAA/NSC WASHDC

C O N F I D E N T I A L SECTION 01 OF 03 HARARE 000532

SIPDIS

AF/S FOR S. HILL
ADDIS ABABA FOR USAU
ADDIS ABABA FOR ACSS
STATE PASS TO USAID FOR E. LOKEN AND L. DOBBINS
STATE PASS TO NSC FOR SENIOR AFRICA DIRECTOR B. PITTMAN

E.O. 12958: DECL: 06/23/2018
TAGS: [PGOV](#) [PREL](#) [ASEC](#) [PHUM](#) [KDEM](#) [ZI](#)
SUBJECT: BITI MISTREATED IN JAIL, DENIED BAIL

REF: HARARE 513

Classified By: Ambassador James D. McGee for reason 1.4(d).

SUMMARY

11. (SBU) The Movement for Democratic Change's (MDC) Secretary General, Tendai Biti, appeared in a Harare court on June 17, 18 and 19 where he was charged with four counts, including treason, which carries the death penalty. Lawyers lodged 11 complaints against the State for his treatment in jail and the circumstances of his June 12 arrest and also unsuccessfully sought to have the case thrown out. Biti's request for bail was denied by the Acting Attorney General, Bharat Patel, who is the only official who can decide on bail in the case of treason. Biti, normally animated and gregarious, appeared stonefaced and dejected, but physically unharmed. Morgan Tsvangirai, President of the MDC, quietly observed the proceedings for several hours on the morning of June 18 from the front row of the overflowing courtroom. Biti is due to reappear in court on June 25 to appeal for bail before his July 7 trial date. END SUMMARY.

Charges against Biti

12. (U) The MDC's second in command, Secretary General Tendai Biti, faces four charges in connection with a "Transition Strategy Document" he allegedly authored on March 25, 2008. He faces charges of treason, publishing a document prejudicial to the State, causing disaffection within the police force, and insulting the President. The four charges all stem from a document that Biti allegedly authored but that did not have his letterhead or a signature even resembling his own. In an Orwellian line of reasoning, the prosecuting attorney alleged the document had provoked violence throughout Zimbabwe. "By authoring that document he caused what has happened to happen," she said. The document was first published in the government mouthpiece, The Herald,

although the prosecution alleges the GOZ found it on the Internet. Biti's lawyers argued that the case should be thrown out because they could prove Biti did not author the document. The judge, however, ruled there was adequate evidence to keep the case open.

Biti's complaints

¶13. (U) Biti's lawyers laid out 11 complaints against the State concerning the manner of his arrest and his treatment in jail. The complaints are also illustrative of the non-transparency of the judicial system. They are as follows:

(a) Biti was "abducted" when he was arrested on the tarmac at 12:30 p.m. local time at Harare International Airport on June 12. He was transported by a Mercedes Benz to a jail before he had even passed through immigration.

(b) On arrest, Biti was not told of the charges against him. Lawyers now know police had a warrant, but it was never presented to Biti.

(c) For the first 48 hours of his detention, Biti was denied access to legal counsel, even as his lawyers were trying desperately to ascertain his location. Only after the High Court issued an order of habeas corpus on June 14 were his lawyers given access to him. Even then, lawyers could only talk with Biti in the presence of three armed guards and

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police.

(d) Biti was questioned continuously from 9:00 p.m. on June 12 until 11 a.m. on June 13 -- 19 hours -- without any sleep or rest, and without access to his legal counsel. He was interrogated by three teams of eight people and was forced to write three statements on issues unrelated to his arrest. He was forced to write a statement on why Zimbabwe must have a government of national unity, to discuss his personal preferences for the model of state most appropriate for Zimbabwe, and to discuss the content of MDC-ZANU-PF negotiations he had on behalf of the MDC with ZANU-PF ministers Patrick Chinamasa and Nicholas Goche. He was also asked to write a statement on why the SADC initiative had failed.

(e) Biti was not given any food or drink during his first 48 hours of detention.

(f) He was detained in inhuman circumstances. He was held in a police station that was previously declared unfit for human habitation by the Zimbabwean Supreme Court. At the police station, he slept in a crowded, unsanitary cell. He and his cellmates were not provided with enough blankets to protect them from the elements, as there is no glass in the cell windows. Biti had only been allowed to bathe twice in the previous 7 days.

(g) The warrant for his arrest indicated he should have been brought to court "as soon as possible", but he was not brought until June 18, 7 days later.

(h) Biti was continuously kept in handcuffs when he was out of his cell, despite being accompanied continuously by three armed guards. (NOTE: On June 17, the judge ordered the handcuffs and leg irons removed. END NOTE.)

(i) Biti's post office box and laptop were searched without a warrant on June 16. Police copied documents from Biti's computer without a warrant. Despite a protest to police, there is still no warrant for the laptop.

(j) Police never notified Biti's lawyers of Biti's June 17 court date. His lawyer only learned of the court hearing

when he went to deliver Biti food on the same day.

(k) Biti was never informed of one of the counts that was included in the warrant.

Bail denied

¶4. (U) The judge ordered an investigation into the allegations of mistreatment and mishandling of Biti, which is due on July 3. Late on Friday June 20, the Acting Attorney General instructed the magistrate in the case to deny bail. Biti's lawyers are scheduled to appeal the bail decision on June 25. Poloff spoke with one of Biti's lawyers on June 24 who confirmed that Biti had been transferred to Harare Central Prison, where conditions are slightly better and Biti has been given access to a doctor.

COMMENT

¶5. (C) While the Biti trial is largely a show of intimidation toward the opposition and a demonstration that ZANU-PF is all powerful, the allegations he faces are very serious. While Biti appears to be in a safer, healthier environment now than during his initial detention, all of

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Harare's jails are now seriously overcrowded and political prisoners are subject to extensive, unlawful questioning. Given ZANU-PF's intent to cripple the MDC and the pro-ZANU-PF bias of almost all judges, we are not optimistic Biti will be released soon. We understand that South African president Thabo Mbeki raised Biti's detention last week with Zimbabwean president Robert Mugabe, and his release as a result of behind the scenes pressure from Mbeki and/or SADC may present the best hope. END COMMENT.

McGee